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August 26, 2016
VIA ECF

Our File No. 386165-000001

Honorable Katherine B. Forrest, U.S.D.J.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
Room 1950
New York, New York 10007-1312

Re: Smart Insurance Company v. Benecard Services, Inc.
Case No. 1:15-cv-04384-KBF

Dear Judge Forrest:

In response to your Honor's Order dated August 25, 2016 (ECF No. 277), we write to advise the Court that we will be serving an Amended Exhibit and Witness List on Smart's counsel by the close of business today, reflecting our efforts to comply with your Honor's Order.

The Amended Witness List has reduced the number of witnesses by six. We understand our obligation to fit those witnesses' testimony within the time allotted by the Court for this trial. The updated list will have four more witnesses than Smart's list (21 witnesses for Benecard and 17 witnesses for Smart).

With respect to the Exhibit List, our revised list will have substantially fewer exhibits than the List served last Friday. The list served last Friday had 372 numbered exhibits, some of which were compilations of multiple underlying exhibits of the same type; counting each of those underlying exhibits separately made for a total of 625 exhibits. I can confirm with confidence that the updated List will have at least 100 fewer exhibits than were on the initial List as per our initial numbering and well more than 300 fewer exhibits counting the compilation exhibits separately. We are still working on the list which precludes me from giving your Honor a precise number at this time. It is simply infeasible to agree to an arbitrary number of exhibits for the many reasons we outlined in our letter to your Honor on Wednesday. Nonetheless, we have taken your Honor's admonitions seriously and will produce a revised List with significantly fewer exhibits, close to (but probably slightly more than) 200.

Respectfully,

DLA Piper LLP (US)

/s B. John Pendleton, Jr.
B. John Pendleton, Jr.

cc: All Counsel of Record (Via ECF)